

STATE OF MICHIGAN
COURT OF APPEALS

DETROIT NEWS, INC.,

Plaintiff-Appellant,

v

CITY OF DETROIT, DETROIT CITY
COUNCIL, MARYANN MAHAFFEY,
KENNETH V. COCKREL, SHARON MCPHAIL,
BARBARA-ROSE COLLINS, JOANN
WATSON, and DETROIT CITY COUNCIL
PERSONNEL COMMITTEE,

Defendants-Appellees,

and

SHEILA M. COCKREL, ALBERTA TINSLEY-
TALABI, KAY EVERETT, and ALONZO W.
BATES,

Defendants.

UNPUBLISHED

June 13, 2006

No. 259323

Wayne Circuit Court

LC No. 04-420270-CZ

Before: Smolenski, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging the circuit court's order granting summary disposition in favor of defendants¹ and dismissing this action alleging violation of the Open Meetings Act (OMA), MCL 15.261 *et seq.* We affirm.

¹ In the lower court, the parties stipulated to the dismissal of defendants Sheila M. Cockrel, Alberta Tinsley-Talabi, Kay Everett, and Alonzo W. Bates. Therefore, these defendants are not parties to this appeal.

The individual defendants are all elected members of defendant Detroit City Council (Council). In addition, defendants Maryann Mahaffey, Kenneth V. Cockrel, Jr., and Sharon McPhail were, at all relevant times, members of defendant Detroit City Council Personnel Committee (Committee). This action arises out of the Committee's selection of five candidates to interview for the position of Research and Analysis Division Director (RAD). The members of the Committee individually reviewed the application materials of the 18 applicants and selected five candidates to interview. Plaintiff filed suit, alleging that this "round robin" meeting of the Committee violated the OMA, which required that the narrowing of the pool of applicants be conducted at a meeting open to the public.

After plaintiff filed its complaint, the Council abandoned its search for a RAD and disbanded the Committee. Consequently, rather than seeking injunctive relief in the lower court, plaintiff sought only a declaratory judgment that the "round robin" process of narrowing the 18 applicants to five candidates violated the OMA. Plaintiff appeals the trial court's ruling that no case or controversy exists because of the Council's abandonment of its search for a RAD.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). It appears that the trial court granted summary disposition for defendants under MCR 2.116(C)(4), which applies in cases in which "[t]he court lacks jurisdiction of the subject matter." MCR 2.116(C)(4). "Where no case of actual controversy exists, the circuit court lacks subject matter jurisdiction to enter a declaratory judgment." *Fieger v Comm'r of Ins*, 174 Mich App 467, 470; 437 NW2d 271 (1988); see also *Associated Builders & Contractors v Dep't of Consumer & Industry Services Director*, 472 Mich 117, 124-125; 693 NW2d 374 (2005). Whether the trial court has subject-matter jurisdiction is a question of law that this Court reviews de novo. *Citizens for Common Sense in Gov't v Attorney General*, 243 Mich App 43, 49-50; 620 NW2d 546 (2000).

Pursuant to MCR 2.605(A)(1), a circuit court may issue a declaratory judgment in "a case of actual controversy within its jurisdiction." The existence of an actual controversy is a condition precedent to the exercise of declaratory relief. *CCSG, supra* at 54-55. "[A]n 'actual controversy' exists where a declaratory judgment or decree is necessary to guide a plaintiff's future conduct in order to preserve his legal rights." *Kircher v City of Ypsilanti*, 269 Mich App 224, 227; 712 NW2d 738 (2005), citing *Shavers v Attorney Gen*, 402 Mich 554, 588; 267 NW2d 72 (1978). Actual injuries or losses are not necessary, *id.*, rather, an actual controversy requires that plaintiffs "plead and prove facts which indicate an adverse interest necessitating the sharpening of the issues raised." *Associated Builders, supra* at 126, quoting *Shavers, supra* at 589.

Once the Council decided to abandon the search for a RAD, plaintiff's case was rendered moot. The actual controversy requirement of MCR 2.605, "requires that the Court not decide moot questions in the guise of giving declaratory relief." *Dep't of Social Services v Emanuel Baptist Preschool*, 434 Mich 380, 470; 455 NW2d 1 (1990) (opinion by Boyle, J.). Further, because plaintiff may commence a new suit should the challenged procedure be used in the future, we cannot conclude that this issue is "one of public significance that is likely to recur, yet evade judicial review." *Federated Publications, Inc v Lansing*, 467 Mich 98, 112; 649 NW2d 383 (2002). The trial court correctly determined that it lacked jurisdiction under MCR 2.605(A)(1) to grant the requested declaratory relief and, therefore, properly granted summary disposition in favor of defendants.

Because of our holding, we need not address plaintiff's remaining issue.

Affirmed.

/s/ Michael R. Smolenski

/s/ Joel P. Hoekstra

/s/ Christopher M. Murray